

Introduced by Senator Kuehl

February 19, 2003

An act to amend Section 2081.7 of the Fish and Game Code, to amend Section 1013 of the Water Code, and to amend Sections 1 and 9 of Chapter 617 of the Statutes of 2002, relating to the Salton Sea, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 317, as introduced, Kuehl. Salton Sea.

(1) Existing law authorizes the Department of Fish and Game, contingent upon, among other things, the execution of a specified Quantification Settlement Agreement on or before December 31, 2003, to authorize the take of species resulting from certain environmental impacts attributable to the implementation of the agreement.

This bill, for the purposes of that provision, would require that that agreement be executed on or before an unspecified date.

(2) Existing law requires that, for the purposes of evaluating the use of water by the Imperial Irrigation District during the term of the Quantification Settlement Agreement and for 6 years thereafter, it shall be conclusively presumed that any water conserved or used for mitigation purposes through land fallowing conservation measures has been conserved in the same amount as if conserved by efficiency improvements.

Existing law prohibits the forfeiture or impairment of a right to use water that is conserved in a described manner to carry out a transfer pursuant to the Quantification Settlement Agreement or to mitigate environmental impacts of that transfer. Existing law provides that during the period that the Quantification Settlement Agreement is in effect and the district is meeting its water delivery obligations under that

agreement, if the Imperial Irrigation District uses land following conservation measures that ensure compliance with certain criteria, no person may seek to obtain additional conserved Colorado River water from the district until the district has adopted a resolution offering to make conserved Colorado River water available.

Existing law makes the operation of these provisions subject to the execution of the Quantification Settlement Agreement on or before December 31, 2002.

This bill would make the operation of these provisions subject to the execution of that agreement on or before an unspecified date.

(3) Existing law requires the Resources Agency and the Technology, Trade, and Commerce Agency, in consultation with others, to review and report to the Governor and the Legislature, on or before June 30, 2003, regarding certain economic impacts arising from the implementation of the Quantification Settlement Agreement.

This bill would change the date on which the report is due to an unspecified date.

(4) Existing law establishes the Fish and Game Preservation Fund, a fund that is continuously appropriated to the department to carry out the Fish and Game Code.

By imposing new duties on the department, this bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2081.7 is of the Fish and Game Code is
2 amended to read:

3 2081.7. (a) Notwithstanding Sections 3511, 4700, 5050, and
4 5515, and contingent upon the fulfillment of the conditions listed
5 in subdivisions (b), (c), and (d), the department may authorize,
6 under Chapter 1.5 (commencing with Section 2050) or Chapter 10
7 (commencing with Section 2800), the take of species resulting
8 from impacts attributable to the implementation of the
9 Quantification Settlement Agreement, as defined in subdivision
10 (a) of Section 1 of the act that added this section during the
11 2001–02 Regular Session, on all of the following:

12 (1) The salinity, elevation, shoreline habitat, or water quality of
13 the Salton Sea.



1 (2) The quantity and quality of water flowing in the
2 All-American Canal, the Coachella Canal, the Imperial Valley and
3 Coachella Valley drains, the New and Alamo Rivers, the Coachella
4 Valley Stormwater Channel, and the habitat sustained by those
5 flows.

6 (3) Agricultural lands in the Imperial Valley.

7 (4) The quantity and quality of water flowing in the Colorado
8 River, the habitat sustained by those flows, and the collection of
9 that water for delivery to authorized users.

10 (b) The Quantification Settlement Agreement is executed by
11 the appropriate parties on or before ~~December 31, 2002~~ ____.

12 (c) After consultation with the Department of Water Resources
13 and an opportunity for public review and comment, the
14 department determines, based on the best available science, that
15 the implementation of the Quantification Settlement Agreement
16 during the first 15 years that the agreement is in effect (1) will not
17 result in a material increase in projected salinity levels at the Salton
18 Sea, and (2) the agreement will not foreclose alternatives for
19 reclamation of the Salton Sea as summarized in Section
20 101(b)(1)(A) of the Salton Sea Reclamation Act of 1998 (P.L.
21 105-372).

22 (d) All of the following conditions are met:

23 (1) The requirements of subdivision (b) and (c) of Section 2081
24 are satisfied as to the species for which take is authorized.

25 (2) The take authorization provides for the development and
26 implementation, in cooperation with federal and state agencies, of
27 an adaptive management process for monitoring the effectiveness
28 of, and adjusting as necessary, the measures to minimize and fully
29 mitigate the impacts of the authorized take. The adjusted measures
30 are subject to Section 2052.1.

31 (3) The take authorization provides for the development and
32 implementation in cooperation with state and federal agencies of
33 an adaptive management process that substantially contributes to
34 the long-term conservation of the species for which take is
35 authorized. Preparation of the adaptive management program and
36 implementation of the program is the responsibility of the
37 department. The department's obligation to prepare and
38 implement the adaptive management program is conditioned upon
39 the availability of funds pursuant to the Water Security, Clean
40 Drinking Water, Coastal and Beach Protection Act of 2002, ~~if it is~~



1 ~~approved by the voters at the statewide general election to be held~~
2 ~~November 5, 2002 (Proposition 50),~~ or other funds that may be
3 appropriated by the Legislature or approved by the voters for that
4 purpose. The failure to appropriate funds does not relieve the
5 applicant of the obligations of paragraphs (1) and (2). However,
6 the applicant shall not be required to fund any program pursuant
7 to this paragraph.

8 (4) The requirements of paragraph (1) may be satisfied if the
9 take is authorized under Chapter 10 (commencing with Section
10 2800).

11 (e) (1) The Secretary of the Resources Agency shall use all
12 available authority to enter into a memorandum of understanding
13 (MOU) between the Secretary of the Interior, the Salton Sea
14 Authority, and the Governor, as provided in Section
15 101(b)(1)(B)(i) of the Salton Sea Reclamation Act of 1998 (P.L.
16 105-372) for the purpose of developing, selecting, and
17 implementing alternatives for projects that realize the objectives
18 of Section 101(b)(1)(A) of the Salton Sea Reclamation Act of
19 1998 (P.L. 105-372). The memorandum of understanding shall be
20 consistent with the authority granted to the Secretary of the
21 Interior under the Salton Sea Reclamation Act of 1998 (P.L.
22 105-372). The memorandum of understanding, at a minimum,
23 shall establish all of the following:

24 (A) Criteria for evaluation and selection of alternatives that
25 will allow for consideration of a range of alternatives including,
26 but not limited to, an alternative designed to sustain avian
27 biodiversity at the Salton Sea, but not maintain elevation for the
28 whole sea, an alternative to maintain salinity at or below current
29 conditions and elevation near 230 feet below mean sea level under
30 a variety of inflow conditions, and a most cost-effective technical
31 alternative.

32 (B) Criteria for determining the magnitude and practicability
33 of costs of construction, operation, and maintenance of each
34 alternative evaluated.

35 (C) A process, with established deadlines, for release of a
36 report regarding the potential alternatives, the selection of a
37 preferred alternative, including a proposed funding plan to
38 implement the preferred alternative, to be analyzed pursuant to the
39 National Environmental Policy Act and California Environmental
40 Quality Act, the release of the draft environmental impact



1 statement/environmental impact report (EIS/EIR) analyzing the
2 alternatives, the release of the final EIR/EIS, and the issuance of
3 a final alternatives report to Congress and the Legislature on or
4 before January 1, 2007.

5 (2) The Secretary of the Resources Agency shall establish an
6 advisory committee representing the parties interested in the
7 future of the Salton Sea. The Resources Agency shall consult with
8 the advisory committee throughout all stages of the alternative
9 selection process.

10 (f) Subsequent to the issuance of the take authorization referred
11 to in subdivision (a), the applicant shall be relieved of any
12 condition included in the take authorization to satisfy division (c),
13 upon fulfillment of either of the following conditions:

14 (1) If the department finds that increases in salinity at the Salton
15 Sea will no longer adversely affect piscivorous birds at the Salton
16 Sea, the department may enter into an agreement with the Imperial
17 Irrigation District that phases out the district's water or irrigation
18 runoff to the Salton Sea.

19 (2) The department makes a finding that a Salton Sea
20 reclamation plan has been funded and implemented that eliminates
21 the need for the Imperial Irrigation District to undertake measures
22 that mitigate impacts to piscivorous birds at the Salton Sea.

23 (g) This section shall not be construed to exempt from any other
24 provision of law the Quantification Settlement Agreement and the
25 Agreement for Transfer of Conserved Water by and between the
26 Imperial Irrigation District and the San Diego County Water
27 Authority, dated April 29, 1998.

28 SEC. 2. Section 1013 of the Water Code is amended to read:

29 1013. (a) The Imperial Irrigation District, acting under a
30 contract with the United States for diversion and use of Colorado
31 River water or pursuant to the Constitution or to this chapter, or
32 complying with an order of the Secretary of the Interior, a court,
33 or the board, to reduce through conservation measures, the volume
34 of the flow of water directly or indirectly into the Salton Sea, shall
35 not be held liable for any effects to the Salton Sea or its bordering
36 area resulting from the conservation measures.

37 (b) For the purposes of this section, and during the term of the
38 Quantification Settlement Agreement as defined in subdivision (a)
39 of Section 1 of the act amending this section during the 2001–2002
40 Regular Session, “land fallowing conservation measures” means



1 the generation of water to be made available for transfer or for
2 environmental mitigation purposes by fallowing land or removing
3 land from agricultural production regardless of whether the
4 fallowing or removal from agricultural production is temporary or
5 long term, and regardless of whether it occurs in the course of
6 normal and customary agricultural production, if both of the
7 following apply:

8 (1) The measure is part of a land fallowing conservation plan
9 that includes mitigation provisions adopted by the Board of
10 Directors of the Imperial Irrigation District.

11 (2) Before the Imperial Irrigation District adopts a land
12 fallowing conservation plan, the district shall consult with the
13 Board of Supervisors of the County of Imperial and obtain the
14 board's assessment of whether the proposed land fallowing
15 conservation plan includes adequate measures to avoid or mitigate
16 unreasonable economic or environmental impacts in the County of
17 Imperial.

18 (c) In order to minimize impacts on the environment, during
19 the term of the Quantification Settlement Agreement and for six
20 years thereafter, in any evaluation or assessment of the Imperial
21 Irrigation District's use of water, it shall be conclusively presumed
22 that any water conserved, or used for mitigation purposes, through
23 land fallowing conservation measures has been conserved in the
24 same volume as if conserved by efficiency improvements, such as
25 by reducing canal seepage, canal spills, or surface or subsurface
26 runoff from irrigation fields.

27 (d) If a party to the Quantification Settlement Agreement
28 engages in water efficiency conservation measures or land
29 fallowing conservation measures to carry out a Quantification
30 Settlement Agreement transfer or to mitigate the environmental
31 impacts of a Quantification Settlement Agreement transfer, there
32 may be no forfeiture, diminution, or impairment of the right of that
33 party to use of the water conserved.

34 (e) During the period that the Quantification Settlement
35 Agreement is in effect and the Imperial Irrigation District is
36 meeting its water delivery obligations under the Quantification
37 Settlement Agreement, if the Imperial Irrigation District utilizes
38 land fallowing conservation measures that ensure compliance with
39 the criteria of subdivision (c) of Section 2081.7 of the Fish and
40 Game Code for the environmental impacts of a water transfer to



1 implement the Quantification Settlement Agreement, no person or
2 local agency, as defined in Section 21062 of the Public Resources
3 Code, may seek to obtain additional conserved Colorado River
4 water from the district, voluntarily or involuntarily, until the
5 district has adopted a resolution offering to make conserved
6 Colorado River water available.

7 (f) Subdivisions (c), (d), and (e) shall not become operative
8 unless the parties have executed the Quantification Settlement
9 Agreement ~~on or before December 31, 2002~~ ____.

10 (g) This section may not be construed to exempt the Imperial
11 Irrigation District from any requirement established under the
12 California Environmental Quality Act (Division 13 (commencing
13 with Section 21000) of the Public Resources Code).

14 SEC. 3. Section 1 of Chapter 617 of the Statutes of 2002 is
15 amended to read:

16 Sec. 1. (a) “Quantification Settlement Agreement” means
17 the agreement, the provisions of which are substantially described
18 in the draft Quantification Settlement Agreement (QSA), dated
19 December 12, 2000, and submitted for public review by the
20 Quantification Settlement Agreement parties, and as it may be
21 amended, and that shall include as a necessary component the
22 implementation of the Agreement for Transfer of Conserved
23 Water by and between the Imperial Irrigation District and the San
24 Diego County Water Authority, dated April 29, 1998,
25 (IID/SDCWA Transfer Agreement), and as it may be amended,
26 and any QSA-related program that delivers water at the intake of
27 the Metropolitan Water District of Southern California’s Colorado
28 River Aqueduct.

29 (b) It is the intent of the Legislature to allocate fifty million
30 dollars (\$50,000,000) from funds available pursuant to the Water
31 Security, Clean Drinking Water, Coastal and Beach Protection Act
32 of 2002, ~~if it is approved by the voters at the statewide general~~
33 ~~election to be held November 5, 2002 (Proposition 50)~~, as a
34 minimum state contribution or matching contribution for federal
35 funds or funds obtained from other sources, to assist in the
36 implementation of the preferred alternative or other related
37 restoration activities, including the program referred to in
38 paragraph (3) of subdivision (d) of Section 2081.7 of the Fish and
39 Game Code, at the Salton Sea or the lower Colorado River, or to
40 assist in the development of a natural community conservation



1 plan that is consistent with the initiative and that is implemented
2 to effectuate the QSA.

3 (c) The Legislature finds that it is important to the state to meet
4 its commitment to reduce its use of water from the Colorado River
5 to 4.4 million acre-feet per year. The Legislature further finds that
6 it is important that actions taken to reduce California's Colorado
7 River water use are consistent with its commitment to restore the
8 Salton Sea, which is an important resource for the state. The
9 Legislature further finds that species previously designated as
10 fully protected may be taken during activities intended to meet the
11 state's commitment to reduce its use of Colorado River water as
12 long as those activities are found to comply with existing law,
13 including Chapter 1.5 (commencing with Section 2050) of
14 Division 3 of the Fish and Game Code.

15 (d) California's Colorado River Water Use Plan is a framework
16 developed to allow California to meet its Colorado River needs
17 from within its basic annual apportionment. California will be
18 required to reduce the amount of Colorado River water it uses by
19 up to 800,000 acre-feet per year.

20 (e) California's basic apportionment of Colorado River water
21 is 4.4 million acre-feet per year, but until recently, due to the
22 availability of surplus river water and apportioned but unused
23 water of Nevada and Arizona, California has used up to 5.2 million
24 acre-feet per year over the past ten years. About 700,000 acre-feet
25 of this additional water has been used to fill the Colorado River
26 Aqueduct, which transports water to the southern California urban
27 coast. Nevada and Arizona are now using, or are close to using,
28 their full apportionments, and California can no longer rely on that
29 surplus of water.

30 (f) The Salton Sea will eventually become too saline to support
31 its fishery and fish-eating birds unless a restoration plan is adopted
32 and implemented. The transfer of water from the Imperial
33 Irrigation District to the San Diego County Water Authority and
34 the other Quantification Settlement Agreement (QSA) parties
35 pursuant to the QSA could result in an acceleration of the rate of
36 salinization of the Salton Sea.

37 (g) Restoration of the Salton Sea is in the state and national
38 interest. Congress recognized in the Salton Sea Reclamation Act
39 of 1998, Public Law 105-372, that appropriate federal agencies
40 should offer alternative restoration options to Congress and the



1 public in order to avoid further deterioration of the internationally
2 significant habitat and wildlife values of the Salton Sea and to
3 protect the wide array of economic and social values that exist in
4 the immediate vicinity of the Salton Sea. The failure to issue that
5 report in a timely fashion has unnecessarily constrained the
6 Legislature’s ability to consider fully the costs and benefits of
7 various options to restoration that should be undertaken at the
8 Salton Sea.

9 SEC. 4. Section 9 of Chapter 617 of the Statutes of 2002 is
10 amended to read:

11 Sec. 9. (a) The Resources Agency and the Technology,
12 Trade, and Commerce Agency, in consultation with the Imperial
13 Irrigation District, Imperial County, and any other entities,
14 organizations, and individuals deemed appropriate by the
15 secretaries of those two agencies, shall review and report to the
16 Governor and the Legislature, on or before ~~June 30, 2003~~ _____, on
17 all of the following:

18 (1) The expected nature and extent of any economic impacts
19 related to the use of land fallowing in the Imperial Valley in
20 connection with the Quantification Settlement Agreement, as
21 defined in subdivision (a) of Section 1.

22 (2) Measures taken by the Imperial Irrigation District in
23 formulating a fallowing program to minimize as far as practicable
24 those economic impacts.

25 (3) Whether and to what extent funds provided to the Imperial
26 Irrigation District for transferred water under the Quantification
27 Settlement Agreement, together with any other funds that have
28 been made available for these purposes, would mitigate those
29 economic impacts.

30 (4) The amount of any additional funds required to mitigate the
31 economic impacts.

32 (b) If the report required under this section indicates that
33 additional funds are required, the report shall include
34 recommendations to the Governor and the Legislature on all of the
35 following:

36 (1) Proposed means for providing those additional funds,
37 including, but not limited to, funding by the state.

38 (2) Formulation of a program to administer those funds in the
39 most effective manner. The program shall be developed in
40 consultation with the ~~Departments~~ *Department* of Finance,



- 1 *Department of Food and Agriculture, and Department of Water*
- 2 *Resources, with the Imperial Irrigation District, and with any other*
- 3 *entities deemed appropriate by the secretaries of the two agencies.*

